IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.498 OF 2005

Shri Atmaram Narayan Salvi .. Appellant

Versus

Shri Mohan Vishnu Salvi & ors. .. Respondents

Mr.S.H.Joshi for appelalnt

CORAM : P.V.KAKADE, J.

DATE : 21ST JULY 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Additional District Judge, Khed dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division Chiplun dismissing his suit for perpetual injunction simplicitor.

2. I have heard the learned counsel for the

plaintiff.

3. The plaintiff came with the case that the suit properties, which consists of several lands, located at Village Khodade, Tal. Guhagar are the ancestral properties of plaintiff and defendants and plaintiff is in possession and in Vahiwat of the suit property by consent of other co-sharer. According to the plaintiff, he is having possessory title in the suit property and since his possession was sought to be obstructed by the defendants the suit came to be filed. Admittedly the suit for partition in respect of some other properties belonging to the joint family is independently pending. The defendants have filed their written statement challenging the suit denying the claim of the plaintiff submitting that the suit properties originally are joint Hindu family properties originally belonged to one Vishnu Salvi and father of plaintiff. Thereafter the lands came to the joint ownership of plaintiff, defendants and other co-sharers. According to him, Gat Nos.37 and 889 were having defendants' possession and in other lands the plaintiff was having in Vahiwat and on such and other grounds the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits on the available evidence and came to the conclusion that the plaintiff failed to prove his lawful title and possession on the suit property and also failed to prove that his possession was obstructed by the defendants and as such the suit came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties confirmed the findings recorded by the lower court and dismissed the appeal holding that the plaintiff and defendant nos.2 to 4 failed to prove that they had better and valid title to the suit lands than the respondent no.1. It was also held that the plaintiff failed to prove that the plaintiff and defendant nos.2 to 4 were in exclusive possession of the suit property and as such it was held that there was no cause of action for the suit. Hence the present appeal.

4. At the outset it may be noted that there is no substantial question of law involved in this appeal. It is an evident as well as admitted position that the suit properties are joint Hindu family properties and all the parties are co-sharer in the suit property. There is no

evidence on record to show that the partitions were effected at the said land at any time. The plaintiff came with the case that he had possessory cause title of the suit property, however, there was absolutely no evidence on record to show that plaintiff and defendant nos.2 to 4 had any better possessory title than the defendant no.1. In other words, this is a suit seeking injunction against co-sharer, who is in joint possession which cannot be allowed in law and therefore, lower appellate court has rightly observed that there is no cause of action for the suit, especially when there is no evidence to show that joint possession of the plaintiff was obstructed by the defendant no.1. In this factual matrix, there is no doubt whatsoever that no substantial question of law existence and as such appeal deserves to be dismissed.

5. In the result appeal stands dismissed. Consequently Civil Application No.123 of 2004 also stands dismissed.